

APPEAL NO. 040206  
FILED MARCH 16, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 8, 2004. The hearing officer determined that: (1) the respondent's (claimant) compensable left knee injury of \_\_\_\_\_, extends to and includes a compensable injury in the form of left knee derangement including patellofemoral malalignment; (2) the claimant's date of maximum medical improvement (MMI) and impairment rating (IR) for the compensable left knee injury of \_\_\_\_\_, are not ripe for adjudication because the claimant has not reached MMI and no IR has been assigned for the compensable left knee injury of \_\_\_\_\_; and (3) the claimant had disability beginning on July 22 and continuing through December 2, 2003, "and for no other time period, as a result of the compensable left knee injury of \_\_\_\_\_." The appellant (carrier) appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable left knee injury on \_\_\_\_\_. There was conflicting evidence as to whether the claimant sustained a repetitive trauma injury or specific injury. The initial medical reports reflect that the claimant described a repetitive trauma injury from walking back and forth, and that the later medical reports reflect that the claimant sustained a specific injury when she bumped her left knee while kneeling. The claimant testified that she sustained a specific left knee injury on \_\_\_\_\_, and that she had misunderstood questions that pertained to the cause of the injury. The claimant underwent physical therapy treatment for her knee and was released to light duty. On October 23, 2002, the parties signed a Benefit Dispute Agreement (TWCC-24) in which the parties agreed that "the claimant sustained a compensable left knee injury on \_\_\_\_\_," and that she did not have disability "to date." On November 12, 2002, the Texas Worker's Compensation Commission (Commission)-appointed designated doctor, Dr. OP, examined the claimant and determined that she reached MMI on August 19, 2002, with a 0% IR.

The claimant continued to have problems with her left knee, and sought medical treatment from Dr. OS in July 2003. The claimant underwent an arthroscopic examination and a lateral release for some mild patellofemoral malalignment of the left knee on August 14, 2003. The Commission sent a letter of clarification to Dr. OP dated October 7, 2003, asking whether the knee surgery warranted a reassessment of the MMI date or the IR. Dr. OP responded in a letter dated October 9, 2003, that he considered the claimant's knee surgery and that he rescinded his prior certification of

MMI. In a medical report dated September 8, 2003, the required medical examination doctor, Dr. M, opined that it was "too early to declare [the claimant] at [MMI] and/or give her an [IR] just three weeks out from a knee arthroscopy." The claimant testified that she was unable to work due to her injury from July 22 through December 2, 2003. A Work Status Report (TWCC-73) dated July 22, 2003, reflects that Dr. OS released the claimant to light duty as of July 22 through August 22, 2003, however, the employer did not have light duty available for the claimant. The claimant returned to work full duty on December 2, 2003.

### **EXTENT OF INJURY**

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer was persuaded by the claimant's testimony and her medical evidence that her compensable left knee injury of \_\_\_\_\_, extends to and includes a compensable injury in the form of left knee derangement including patellofemoral malalignment. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

### **MMI/IR**

Sections 408.122(c) and 408.125(c) provide that where there is a dispute as to the date of MMI and the IR, the report of the designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a request for clarification is also considered to have presumptive weight, as it is part of the designated doctor's opinion. The hearing officer determined that the initial certification dated November 18, 2002, from the designated doctor, is not entitled to presumptive weight, and that the subsequent certification, a response to a request for clarification, dated October 9, 2003, from the designated doctor, is entitled to presumptive weight. The evidence reflects that the designated doctor considered the claimant's left knee surgery and rescinded his prior MMI certification. Dr. OP opined that the claimant was not at MMI, and he did not assign an IR. The hearing officer concluded that the claimant's date of MMI and IR for the compensable left knee injury of \_\_\_\_\_, is not ripe for adjudication. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the MMI/IR determination on appeal. Cain, supra.

### **DISABILITY**

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the

preinjury wage." The hearing officer resolved the conflicts in the evidence by deciding that the claimant had disability from July 22 through December 2, 2003. The hearing officer's decision on the disability issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Margaret L. Turner  
Appeals Judge

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Edward Vilano  
Appeals Judge